IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7762 OF 2004

Lilaram Ladharam Lalwani .. Petitioner.
Vs.
Kishanchand Lilaram Lalwani & Ors. .. Respondents.

Mr.T.F.Sharma with Mr.T.J.Gohil for the petitioner.
Mr.Kirit J.Hakani for the respondents.

CORAM : D.B.BHOSALE, J.

DATED : 20TH SEPTEMBER, 2004

P.C.:

. Heard Mr.Sharma, learned counsel for the petitioner and Mr.Hakani, learned counsel for the respondents.

2. The petitioner's application for framing the additional issue after the arguments were concluded has been rejected by the learned Judge of the City Civil Court. The impugned order dated 13.8.2004 reads thus:

> . The issues were framed long back and recasted once by my Ld.Predecessor. Even evidence was lead before him by parties on satisfaction of the frame work of issues. The parties closed the cases by filing closure pursis. Arguments were

> fully heard and when stage of dictation of judgment arises this application is moved in the midst of the argument of Defendant.
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> . It is seen that in W.S. page 14 the defendant admitted the ownership of Plaintiff. The only dispute raised is about his right to claim as full owner. Hence issue no.3 as framed in this suit already covers this pleading of the ownership of Plaintiff (by any mode) is not disputed there cannot be issue on this facts. Hence this issue as prayed does not arise the question of framing if out of context. The prayer and application is thus rejected".

3. In view of the provisions of order 14 Rule 5, in my opinion, no case for interference in the impugned order is made out. It is always open for the learned Judge to frame additional issue if he so desires before passing the decree. Even if the learned Judge does not frame the issue before passing the decree, as desired by the party, it is open for the petitioner to raise this contention in the appeal, if the suit is decreed against him. With these observations the petition is disposed of.

(D.B.Bhosale, J.)